IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 118 of 2004

RAM SWAROOP
V/S
STATE OF RAJ. & ORS

Mr. S.L.JAIN, for the appellant / petitioner

Mr. HR SONI, A.G.A., for the respondent

Date of Order : 3.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the record.

It is contended by the learned counsel for the appellant, that since the appellant is in possession of the land, even if he is trespasser, his right to get water supply, could not be denied, in view of the provisions of Section 36 of Rajasthan Irrigation and Drainage Act, 1954, hereafter referred to the Act, and Rule 36 of the Rajasthan Irrigation and Drainage Rules, 1955, hereafter referred to as the Rules.

I have considered the submissions, and have gone through the above provisions.

For the convenience, the two provisions are quoted here, which read as under:-

> "Sec. 36 Charge on occupier for water how determined- (1) The rates to be charged for water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules to be made by the State Government and such occupiers as accept the water, shall pay for it accordingly.
>
> (2) A rate so charged shall be called the "Occupier's" rate.
>
> (3) The rules here in before referred to may prescribe and determine what persons or classes of persons are to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sub-let their lands, or of proprietors and of persons to whom, proprietors may have let the lands held by them in cultivating occupancy."
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> "Rule 36 Definition of the term 'Occupier'- For the purpose of section 36 the following persons shall be deemed to be 'Occupiers', namely:-
>
> (a) Where the proprietor or the tenant, other than a tenant of sir land, is in actual cultivator occupation, such proprietor or tenant; and
>
> (b) Where the proprietor of sir land has let it, or where the tenant of the land other than sir land has sub-let it, such proprietor or tenant and the person in actual cultivatory occupation.

> In the case referred to in clause (b), the proprietor or tenant and the person in actual cultivatory occupation shall be jointly and severally liable for the payment of the occupier's rate."

In my view, a bare look at these two provisions shows, that they do not support the proposition, that even a trespasser is entitled to have the water supply as an absolute right, as sought to be pleaded by the appellant. In that view of the matter, this contention does not hold good.

Since the record has been requisitioned, and has been received, I have gone through the record, and find, that the present litigation appears to be depicting a telling story, inasmuch as, the suit is filed on 7.12.1994, impleading the state authorities as defendants no. 1 to 3, alleging that the land was allotted to Prithvi Singh and Lal Singh, as Pong Dam Oustees, who sold the land to the plaintiff on 21.10.1975, vide agreement, and was delivered possession, and since then they are continuing in possession, and receiving water supply. It is then alleged that in view of the controversy about Pong Dam Oustees being pending with the State Government, the sale deed could not be executed, but then, he is continuing in possession. However, now the Tehsildar, has written a letter dt. 29.4.1994, to the Executive Engineer, to discontinue the water supply of the plaintiffs. It is then

alleged, that since the plaintiff is in lawful possession of the land, as purchaser, the water supply could not be discontinued, without giving opportunity of hearing. It was then alleged, that against the order dt. 29.4.1994, the plaintiff filed appeal before the District Collector, which was dismissed on 6.12.1994. Interalia with these averments, invoking the provisions of Section 80(2) C.P.C., the suit has been filed for declaration about the plaintiff being entitled to continue to get water supply, being purchaser, and in possession, and praying for perpetual injunction restraining the defendants from ever disconnecting the water supply. It appears that private defendants were then impleaded as parties under O. 1 Rule 10, being Om Prakash, Dev Raj and Munshi Ram, who filed written statement, contending interalia, that the plaintiff has failed to get relief from all Tribunals and forums, and then, has filed present suit by projecting wrong facts. It was pleaded that land was allotted to the defendants no. 4 and 5, while the plaintiff purportedly obtained agreement from Prithvi Singh and Lal Singh, showing them to be the allotees, who had nothing to do with the land, and no controversy was ever pending before any Tribunal or authority. It was also pleaded, that the plaintiff was ordered to be dispossessed, treating to be trespasser, that order was challenged in appeal, and that appeal has also been dismissed, and that order of the Collector dt. 6.12.1994 has further been confirmed in appeal by Revenue Appellate Authority, vide

judgment dt. 22.4.1995. Interalia with these averments, it was prayed that the suit be dismissed.

Significantly, in the trial court, no evidence whatever was led by the plaintiff, much less to show him to be in possession as a purchaser under the agreement from the allotee. Obviously since the plaintiff did not lead any evidence, no evidence was led on the side of the defendant either. In this sequence, I find on record, certain documents, showing that the plaintiff was ordered to be dispossessed, as late as on 18.6.1989. That order had been affirmed by the appellate authority also, vide judgment dt. 22.4.1995, and the present suit obviously appears to have been filed by concealing these facts. The plaintiff also filed an application for temporary injunction, and in the process of deciding temporary injunction application, by the trial court, and the learned lower appellate court, true picture did come before the Court. I am left to conjecture only, that it appears, that it is in this view of the matter, that the plaintiff tried to play safe, by not appearing as a witness in the Court, lest he might expose himself to the prosecution for perjury etc. Be that as it may.

The fact remains, that it has never been the case of the plaintiff, that he is a trespasser, or that, despite being trespasser he is entitled to have the water supply

continued, and the plaintiff has not proved his capacity, about the so called possession, to be in any manner supportable by the provisions of Rule 36, so as to be entitled to have the water supply continued. In that view of the matter, taken from every stand point, the plaintiff is not entitled to any relief whatever.

In the totality of circumstances, it is writ large, that by now the state must have dispossessed the appellant, in view of the judgment of Revenue Appellate Authority, given way back in the year 1995, and if not, State would stand better advised to dispossess him at least by now, as in the garb of claiming to be in possession, and suppressing the lawfully passed orders by the competent authorities, such litigation, like the present one is initiated, and an indirect attempt is made to retain possession in the garb of being entitled to have the water supply, which is nothing less then grave abuse of the process of law.

The appeal thus does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/